In the Supreme Court of the United States

OCTOBER TERM, 1941.

No. 332.

THE WILLIAMS MANUFACTURING COMPANY,
Petitioner,

vs.

UNITED SHOE MACHINERY CORPORATION,
Respondent.

REPLY BRIEF FOR PETITIONER ON PETITION FOR CERTIORARI.

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LAW ISSUES HERE ONLY: NO RETRIAL OF THE FACTS SOUGHT.

Petitioner desires no retrial on the facts and would not have such retrial if it could. The facts are plain and settled: petitioner does seek a proper application of the law *on extension of monopoly,* based upon the facts as found by the Courts below. Petitioner's issue with the Courts below is one solely of law as to the application of the decisions of this Court in *Bassick v. Hollingshead,* 298 U. S. 415; and *Lincoln v. Stewart-Warner,* 303 U. S. 545.

We likewise agree with respondent that this is no new or doubtful question of law, but a failure to apply the applicable decisions of this Court to an established state of facts.

Petitioner's assertion that the second McFeely patent is a repatenting of the subject matter of the first McFeely patent (now expired) under the facts as established by the Courts below, is purely a question of law, there being no dispute about the facts.

This is a question, therefore, of a construction of patents, which is a matter of law. *Powder Co. v. Powder Works*, 98 U. S. 126, 134; *Singer v. Cramer*, 192 U. S. 265; *Sanitary Refrigerator v. Winters*, 280 U. S. 30; *Hurin v. Electric Vacuum Cleaner*, 298 F. 76 (C. C. A. 6); *Budd v. Wilson*, 21 F. 2d 803 (C. C. A. 6); *Motor Wheel v. Rubsam*, 92 F. 2d 129, 131 (C. C. A. 6), certiorari denied 304 U. S. 560; *Baldwin Rubber v. Paine & Williams*, 99 F. 2d 1, 3 (C. C. A. 6).

Likewise, what is or is not aggregation, is a construction of a patent and is a matter of law. See cases cited above and *Grinnell v. Johnson*, 247 U. S. 426.

Therefore, in view of the foregoing, it will be seen that respondent is in error in stating that the issue is one of fact: the only issues are those of law.

PATENT WILL NOT EXPIRE BEFORE THE DECISION OF THIS COURT.

In *Lincoln Engineering v. Stewart-Warner*, 302 U. S. 682, certiorari granted January 3, 1938, a case involving the same question of repatenting an old combination by improving an element, this Court heard the case on its merits March 10, 1938, and decided it March 28, 1938 (303 U. S. 545), a little less than three months after the certiorari was granted. On that basis a good part of a year would be left in this case and that time would be of great public importance to those operating under license from respondent.

MATTERS NOT RAISED HERE.

We note in passing, on page 2 of respondent's brief, reference to the commercial construction of the plaintiff [respondent] having been copied by the defendant [petitioner], but obviously, *as a matter of law*, the issue can only be whether the petitioner's construction fell within the claims of respondent's patent. Whether it did or did not is not an issue we are raising here: petitioner is only raising the issue of the law questions set forth in the peti-

tion of which the extension of monopoly on the established state of facts is a primary consideration.

Of course, it is not proper to compare constructions to make out infringement. *Magnavox v. Hart & Reno*, 73 F. 2d 433, 445, 446 (C. C. A. 9); *Grand Rapids v. Weber*, 38 F. 2d 730, 731 (C. C. A. 9), certiorari denied 281 U. S. 767; *Hubbell v. General Electric*, 267 F. 564 (C. C. A. 2).

PUBLIC INTEREST.

We are relying on Section 5(b) of Rule 38 of this Court to the effect that where a Court below does not carry out the plain decision of this Court and follow the laws established by it, this is ground for certiorari in order to insure uniformity of the application of legal principles throughout the country. See also *Cities Service v. Dunlap*, 308 U. S. 208, 209.

The statement of respondent that 1200 machines under lease are not affected by patent questions; and, therefore, this case cannot be of public importance, **is negatived by the record and decision of the Court below, which put great emphasis upon this evidence introduced by the respondent as evidence of invention and commercial success of these 1200 machines.** We are at a loss to understand why this matter could be of such great importance in the Courts below and as adopted by the Courts below, and suddenly in this Court become of no importance either patent wise or as a matter of public importance.

We repeat the issue to be determined in this Court is one of law only on an established state of facts.

Respectfully,

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